

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/14-01/18**

Date: **19 April 2022**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

**With Confidential *Ex Parte* Annexes A and B only available to the Yekatom
Defence and the Registry**

**Public Redacted Version of the “Yekatom Defence Response to the “Fifth
Registry Report on the Implementation of the Restrictions on Contact for
Mr Alfred Yekatom Ordered by Trial Chamber V”, 6 April 2022, ICC-01/14-
01/18-1348-Conf-Exp”, 19 April 2022**

Source: Defence for Mr. Alfred Rombhot Yekatom

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Mr Karim Asad Ahmad Khan
Mr Kweku Vanderpuye

Counsel for Mr. Yekatom

Ms Mylène Dimitri
Mr Thomas Hannis
Ms Anta Guissé
Mr. Florent Pages-Granier

Counsel for Mr. Ngaïssona

Mr Geert-Jan Alexander Knoops
Mr Richard Omissé-Namkeamaï
Ms Marie-Hélène Proulx

Legal Representatives of Victims

Mr Dmytro Suprun

Legal Representatives of Applicants

Mr Abdou Dangabo Moussa
Ms Elisabeth Rabesandratana
Mr Yaré Fall
Ms Marie-Edith Douzima-Lawson
Ms Paolina Massidda

Unrepresented Victims

**Unrepresented Applicants
(Participation / Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

INTRODUCTION

1. The Defence for Mr Alfred Rombhot Yekatom ("Defence") hereby responds to the "Fifth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V" ("Report").¹
2. The Defence submits its observations on the 4 April 2022 Call mentioned in the Report, it is argued that no incident can be inferred from this call and that Mr Yekatom behaved in a *bona fide* manner in relation to this event. The Defence respectfully requests the Chamber to amend Mr Yekatom's list of non-privileged contacts in order to allow the addition of [REDACTED]. Finally, the Defence also requests a modification of the currently imposed restriction regime in order to allow non-actively monitored calls with some members of Mr Yekatom's immediate family.

PROCEDURAL HISTORY

3. On 17 November 2018, Mr. Yekatom was transferred to the ICC Detention Centre.² The same day, Pre-Trial Chamber II implemented restrictions on the communications of Mr. Yekatom.³ Those restrictions have been implemented continuously ever since and have also been confirmed by Trial Chamber V ("Chamber").⁴
4. Under the current restrictions Mr Yekatom is, *inter alia*, only allowed to call individuals present on his list of non-privileged contacts for 180 minutes per week (the "Current Restrictions").⁵

¹ [ICC-01/14-01/18-1348-Conf-Exp](#). A Confidential Redacted Version of the Report is also available: [ICC-01/14-01/18-1348-Conf-Red](#).

² [ICC-01/14-01/18-17-US-Exp-Red](#).

³ [ICC-01/14-01/18-11](#).

⁴ [ICC-01/14-01/18-485-Red](#).

⁵ [ICC-01/14-01/18-485-Red](#), para. 13.

5. On 6 April 2022, the “Fifth Registry Report on the Implementation of the Restrictions on Contact for Mr Alfred Yekatom Ordered by Trial Chamber V” was filed.⁶ The Registry reported a potential issue with a call on 4 April 2022 during which Mr Yekatom allegedly spoke to an individual not present on his list of non-privileged contacts (the “4 April 2022 Call”). A Confidential Redacted Version of the Report was notified to all parties on the same day.⁷

APPLICABLE LAW

6. The Regulation 99(1)(i) of the Regulations of the Court states that:

Every detained person shall be entitled, inter alia, to [...] communicate by letter or telephone with his or her family and other persons.

7. The Regulation 101(2) of the Regulations of the Court states that:

The Prosecutor may request the Chamber seized of the case to prohibit, regulate or set conditions for contact between a detained person and any other person, with the exception of counsel, if the Prosecutor has reasonable grounds to believe that such contact: [...] (b) Could prejudice or otherwise affect the outcome of the proceedings against a detained person, or any other investigation; (c) Could be harmful to a detained person or any other person; [...] (f) Is a threat to the protection of the rights and freedom of any person.

SUBMISSIONS

I. On the alleged incident during the 4 April 2022 Call

8. The Defence notes the Registry’s submission regarding an alleged incident during a call on 4 April 2022 during which Mr Yekatom spoke with a person identified as [REDACTED], who was not on his list of non-privileged contacts, during a conversation with [REDACTED].⁸

⁶ [ICC-01/14-01/18-1348-Conf-Exp.](#)

⁷ [ICC-01/14-01/18-1348-Conf-Red.](#)

⁸ [ICC-01/14-01/18-1348-Conf-Exp.](#), para. 6.

9. Mr Yekatom contests any violation of his restrictions during the 4 April 2022 Call as the report on the alleged violation appears to originate from a *bona fide* misunderstanding of Mr Yekatom with regard to the various Detention Centre forms used to list the persons allowed to converse with a detainee.
10. Indeed, on 7 January 2022, Mr Yekatom used the “*Fiche de numéro de telephone C (remplacement ou suppression)*” to replace the phone number used for contacts with [REDACTED] who was already on his authorised list of nonprivileged calls; on the same form, in the section “*Indiquer les autres personnes (additionnelles) avec lesquelles vous êtes susceptibles de parler à ce numéro de telephone*”, Mr Yekatom wrote [REDACTED]. Mr Yekatom handed back the form to the Detention Centre, and after assessment and vetting of Mr Yekatom’s request, the form was handed back by the Detention Centre with the handwritten comment “Done” at the top (Annex A).
11. This form, together with the comment “Done”, led Mr Yekatom to believe that he had completed the necessary requirement to speak with [REDACTED], the wife of [REDACTED], through the latter’s telephone number. This belief was reinforced by the fact that Mr Yekatom spoke with [REDACTED] in February 2022, on the phone number provided in the 7 January 2022 form, without being informed at any point by the administration of the Detention Centre that he was not supposed to have done so.
12. On 6 April 2022, while in Court and attending the hearing of P-0966, the Defence received an email from the Detention Centre with a courtesy copy of a memorandum reminding Mr Yekatom of his contact restrictions. The memorandum provided details about the 4 April 2022 Call, and the email indicated the memorandum would be provided to Mr Yekatom after his return at the Detention Centre.⁹ At the time of this email, the *ex parte* version of the

⁹ Email from the Detention Centre to the Defence dated 6 April 2022 13:54.

Report mentioning this incident had already been filed by the Registry through CMS over one hour prior.¹⁰

13. Upon his return to the Detention Centre that day, Mr Yekatom received the memorandum. He explained to the Detention Centre staff that [REDACTED] was on the form “*Fiche de numéro de telephone C (remplacement ou suppression)*” (Annex A) and showed a copy of the form. The Detention Centre staff explained that because [REDACTED] was over 18 years old, she had to be added on another form (Annex B), even if the phone number was the same as that of [REDACTED], in relation to whom Mr Yekatom had already completed a first form.
14. The Defence finds it regrettable that the account provided by the Registry to the Chamber on the 4 April 2022 Call is incomplete. Indeed, the information to the effect that “[o]n 6 April 2022, the CCO notified a memorandum to Mr Yekatom”¹¹ was not yet true at the time of the submission of the Report, as Mr Yekatom was still at the seat of the Court (with the hearing ending two and a half hours after the filing of the Report).¹² It is submitted that, out of fairness to Mr Yekatom and in order to provide the complete information to the Chamber, the Registry should have filed an addendum containing the information that arose once the Detention Centre staff had a conversation with Mr Yekatom.
15. The Defence further regrets that the Registry effectively deprived the Defence and Mr Yekatom himself of the opportunity to provide explanations on this alleged incident by notifying them only after the filing of the Report. The *inter partes* discussion with the Registry would have allowed the above-mentioned

¹⁰ CMS Notification email dated 6 April 2022 14:34 indicating that as “Reception Date/hour” of the filing “06/04/2022 12:42:19”.

¹¹ [ICC-01/14-01/18-1348-Conf-Red](#), para. 7.

¹² [ICC-01/14-01/18-T-118-CONF-ENG ET](#), page 63.

explanation to be provided and potentially shortened the present submissions before the Chamber. This is especially the case in light of the fact that during the conversation with [REDACTED] “the substance of the case was not discussed”;¹³ that [REDACTED] was already added in the 7 January 2022 form; and that as soon as Mr Yekatom arrived at the Detention Centre he completed the “*Telephone number form – B*” with the name of [REDACTED] and the same phone number as the one indicated in the 7 January 2022 form (Annex B), which was handed back with the word “Done” handwritten on the same day. Those facts further show that the incident does not amount to any violation of the restrictions.

16. In light of the above, the Defence respectfully requests the Chamber to find that Mr Yekatom acted in a *bona fide* manner and that the 4 April 2022 Call does not constitute a breach of the restrictions.

II. On the request to re-add Mr Yekatom’s [REDACTED] on his non-privileged contact list

17. The Defence respectfully requests the Chamber to allow the re-addition of [REDACTED], Mr Yekatom’s [REDACTED], to the latter’s list of non-privileged contacts (the “List”) following his removal in July 2020.¹⁴
18. The Defence recalls that on 29 June 2020, during a conversation with [REDACTED], [REDACTED] recorded part of the conversation and shared it with a person not on Mr Yekatom’s List.¹⁵ It was however noted that the recorded conversation “appears to refer to private matters and thus the substance of the conversation appears not to have breached the Chamber’s order”.¹⁶ The Defence acknowledged the incident, transmitted Mr Yekatom’s apologies to the Chamber, undertook to remind the persons present on the List

¹³ [ICC-01/14-01/18-1348-Conf-Exp](#), para. 6.

¹⁴ [ICC-01/14-01/18-592-Conf-Exp](#), para. 16. Confidential Redacted Version available: [ICC-01/14-01/18-592-Conf-Red](#).

¹⁵ [ICC-01/14-01/18-592-Conf-Red](#), para. 10.

¹⁶ *Ibid*, para. 13.

of the rules, and did not oppose the transmission of the transcript of the conversation to the Prosecution.¹⁷ As mentioned above, this incident led to the removal of [REDACTED] from the List.

19. As previously underlined by the Chamber, “the right to privacy and family life is an internationally recognised human rights principle” which is applicable before this Court “by virtue of Article 21(3) of the Statute”.¹⁸ Trial Chamber VI also ruled that the longer a detainee “is restricted in his ability to speak to his children, the more difficult it will become to maintain close parental ties”.¹⁹ The Defence contends that almost two years after the incident and removal of [REDACTED] from the List, the continuous absence of contacts between Mr Yekatom and [REDACTED] disproportionately affects their relationship and contravenes his right to maintain a family life while in detention.
20. Mindful of the current restrictions on Mr Yekatom’s communications, the Defence reminded [REDACTED] on 14 April 2022 of the rules that are to be respected while talking with [REDACTED]. [REDACTED] undertook to respect all of them. The Defence also wishes to underline that it does not intend to request for [REDACTED] the modification of restrictions developed in section III of the present response.
21. Consequently, in light of the above, the Defence respectfully requests the Chamber to authorize the addition of [REDACTED] to Mr Yekatom’s List.

III. On the modification of Mr Yekatom’s Current Restrictions

A. On the proposed modification of the Current Restrictions

22. The Defence respectfully requests that the Chamber relax Mr Yekatom’s communication restrictions to allow for non-privileged telephone calls with

¹⁷ [ICC-01/14-01/18-606-Conf](#), paras 4-8.

¹⁸ [ICC-01/14-01/18-485-Red](#), para. 16.

¹⁹ *Prosecutor v. Said Abdel Kani*, [Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions](#), 3 March 2022, ICC-01/14-01/21-247-Red, para. 43.

selected members of his immediate family to take place under the regular monitoring regime, *i.e* without active monitoring and not limited to only 180-minutes per week. All non-privileged telephone calls to other persons would remain subject to the active monitoring of the Current Restrictions. All non-privileged telephone calls, under either monitoring regime, would remain subject to the existing restrictions on prohibited topics of discussion and languages to be used.

23. The Defence highlights that this regime has recently been adopted for the communications of Mr Mahamat Said Abdel Kani and that, similarly to that regime, the Defence does not oppose providing the Registry and the Prosecution, in advance, with the identities of the persons for whom the lift of contact restrictions will be sought.²⁰ This approach would allow the Prosecution and VWU to proceed with all the necessary checks to ensure that the individuals would not constitute a risk for the protection of the witnesses in the case. As it stands, Mr Yekatom would only seek the relaxation of his restrictions for [REDACTED] and for his underage children.
24. In addition, the Defence recalls that pursuant to Regulation 174 of the Regulations of the Registry, calls to the selected individual of his immediate family would remain passively monitored at all times in the form of recording. Under Regulation 175 of the Regulations of the Registry, such calls may also be subject to active monitoring at random by the Chief Custody Officer or the Registry. Should the Chamber consider it necessary, at any time it may order a *post factum* review of these calls.

²⁰ *Prosecutor v. Said Abdel Kani*, [Decision on the Defence Application for Interim Release of Mahamat Said Abdel Kani and Contact Restrictions](#), 3 March 2022, ICC-01/14-01/21-247-Red, paras. 45-46.

B. On the justification for the amendment of the Current Restrictions

25. The Defence notes, *ab initio*, that Mr Yekatom benefits from the presumption of innocence and that the imposition of restrictions – including increased monitoring – on a detained person’s contacts constitutes the exception and not the rule.²¹
26. *First*, the Defence recalls that the Chamber has previously indicated that “the passage of time is a factor that could become more significant as more time elapses”.²² It is understood that this does not mean per se that the risks in question no longer exist and/or that restrictions have become disproportionate.²³ However, it must be considered that Mr Yekatom has been under restrictions from the moment he arrived at the ICC Detention Centre, three and a half years ago. The restrictions imposed on Mr Yekatom’s contacts with family members under Regulation 101 of the Regulations are, by their very nature, an impediment to his right to family life, which is an internationally recognised human rights principle applicable before this Court.²⁴
27. This passage of time is, by definition, linked to the advancement of the proceedings which is also a factor to be taken into account during the assessment of the necessity of communication restrictions.²⁵ At this moment, the Prosecution has called approximatively one third of its witnesses for examination and, since the beginning of the trial, there has been no indication that Mr Yekatom has made any attempts to influence these Prosecution witnesses or the outcome of the proceedings.

²¹ *Prosecutor v. Ntaganda*, [Decision on requests to call witnesses in relation to sentencing and for increased monitoring of Mr Ntaganda’s contacts and scheduling the sentencing hearing](#), 21 August 2019, ICC-01/04-02/06-2384-Red, para. 57.

²² [ICC-01/14-01/18-485-Red](#), para. 18

²³ *Ibid*, para. 20.

²⁴ *Ibid*, para. 16.

²⁵ [ICC-01/14-01/18-727-Conf](#), para. 26.

28. In light of the fact that restrictions imposed must be the least restrictive possible to the detained person's rights ²⁶ and that the Chamber must be guided by its obligation to continuously review the restrictions in place and to "carefully balance the need for and proportionality of the restrictions against the important right accorded to detained persons to have contact", ²⁷ the Defence submits that the passage of time and advancement of the proceedings favors the relaxation of the restrictions imposed on Mr Yekatom's communications with his immediate family.
29. *Second*, the Defence argues that the new restrictions decided in the Said case constitutes a change of circumstances warranting a modification of the Current Restrictions. Indeed, both Mr Said and Mr Yekatom are currently before the International Criminal Court for events that occurred in the same country: the Central African Republic. The logistic and prevailing security situation in the country is consequently the same for both detainees. As the Pre-Trial phase has concluded and the Prosecution's investigations of the case against Mr Yekatom should be completed, in addition to the fact that Mr Yekatom has never tried to influence the outcome of the proceedings, it is submitted that the striking difference between the restrictions on the communications of Mr Said and those of Mr Yekatom would constitute a breach of the equality of treatment between detainees.
30. *Finally*, the Defence submits that its proposed modification of the Current Restriction, in addition to ensuring the respect of Mr Yekatom's right to family life, also favours the judicial economy. Indeed, should the Chamber grant the Defence modification request, the presence of a Sango interpreter during Mr Yekatom's calls will no longer be necessary when he is in contact with his

²⁶ See *inter alia*, Prosecutor v. Al Hassan, [Decision on Mr Al Hassan's restrictions and accesses while in detention](#), 14 February 2020, ICC-01/12-01/18-557-Red3, para. 10.

²⁷ [ICC-01/14-01/18-1008-Conf](#), para. 10.

immediate family, which would save considerable Registry resources. This is especially the case as, if Mr Yekatom is allowed to communicate freely with his immediate family, the duration of his actively monitored calls with other individuals can be reduced from the current 180-minutes per week provision.

CONFIDENTIALITY

This Response is filed on a confidential *ex parte* basis corresponding to the classification of the Report. A Public redacted version will be filed forthwith.

RELIEF SOUGHT

In light of the above, the Defence respectfully requests Trial Chamber V to:

FIND that the 4 April 2022 Call does not constitute a breach of Mr Yekatom's restrictions;

ORDER the Registry to add [REDACTED] on Mr Yekatom's list of non-privileged contacts; and

MODIFY the contact restrictions as described in paragraphs 22 to 24.

RESPECTFULLY SUBMITTED ON THIS 19th DAY OF APRIL 2022²⁸



Me Mylène Dimitri
Lead Counsel for Mr. Yekatom

The Hague, the Netherlands

²⁸ The Defence is gratefully acknowledges the assistance of Legal Intern Jeremy Pizzi in the drafting of this response